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6 Attorneys for Defendant
GOOGLE INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

12 OVERTURE SERVICES, INC., a Delaware
corporation,

13 Plaintiff,

14 v.

15 GOOGLE INC., a California corporation,

16 Defendant.

Case No. C 02-01991 CRB ADR

**DECLARATION OF MICHAEL S. KWUN
IN SUPPORT OF DEFENDANT GOOGLE
INC.'S MOTION FOR AN ORDER
EXTENDING GOOGLE'S TIME TO
SERVE INITIAL INVALIDITY
CONTENTIONS**

17 Date: N/A (L.R. 6-3)
Time: N/A (L.R. 6-3)
Courtroom: 8, 19th Floor
18 Judge: Hon. Charles R. Breyer

1 I, Michael S. Kwun, declare as follows:

2 1. I am an associate at the law firm of Keker & Van Nest, LLP, counsel of record for
3 defendant Google Inc. ("Google") in the above-captioned matter. I make this declaration in
4 support of Google's Motion for an Order Extending Google's Time to Serve Initial Invalidity
5 Contentions. I make the following declaration based upon my personal knowledge, and could
6 and would testify thereto under oath if called upon to do so.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of U.S. Patent No.
8 6,269,361.

9 3. Attached hereto as Exhibit 2 is a true and correct copy of the parties' initial Joint
10 Case Management Statement, which was filed on August 19, 2002.

11 4. Attached hereto as Exhibits 3 and 4 is a true and correct copy of plaintiff Overture
12 Services, Inc.'s ("Overture's") Disclosure of Asserted Claims and Preliminary Infringement
13 Contentions (hereinafter, "Preliminary Infringement Contentions"). , which it served on Google
14 on September 16, 2002. Exhibit 3 is the Preliminary Infringement Contentions, without the
15 "claim chart" that was originally attached thereto as Exhibit A. Exhibit 4 is Overture's claim
16 chart.

17 5. Prior to filing this motion, I requested that Overture supplement its Preliminary
18 Infringement Contentions. I also noted that unless Overture promptly supplemented its
19 Preliminary Infringement Contentions, Google would want Overture to agree to extend Google's
20 time to serve its Preliminary Invalidity Contentions, because under the Patent Local Rules
21 Google's deadline is set relative to the time Overture serves its Preliminary Infringement
22 Contentions.

23 6. I first raised this issue during a telephone conversation with counsel for Overture
24 on September 17, 2002, the day after Overture served its Preliminary Infringement Contentions.
25 Attached hereto as Exhibit 5 is a true and correct copy of a letter I sent to counsel for Overture
26 on September 17, 2002, shortly after that telephone conversation.

27 7. Opposing counsel and I continued to discuss the matter by letter. Attached hereto
28 as Exhibit 6 is a true and correct copy of a letter dated September 19, 2002 that I received from

1 counsel for Overture. Attached hereto as Exhibit 7 is a true and correct copy of the September
2 19, 2002 letter that I sent to counsel for Overture in response to his letter.

3 8. I again raised the issue briefly with counsel for Overture during a telephone
4 conversation on September 23, 2002, and he stated that I should expect a letter on the subject the
5 next day. Attached hereto as Exhibit 8 is a true and correct copy of a letter dated September 24,
6 2002 that I received from counsel for Overture.

7 9. We discussed the issue one final time during a telephone conversation on
8 September 27, 2002. During that conversation, we agreed that we had reached an impasse.

9 10. In summary, after extensive efforts to resolve this issue without a motion, the
10 parties were unable to resolve their differences. Google still believes that Overture should
11 supplement its Preliminary Infringement Contentions, and that Google's deadline for serving its
12 Preliminary Invalidity Contentions should be extended accordingly. Overture, however, has
13 declined to supplement its Preliminary Infringement Contentions, and declined to stipulate to an
14 extension of Google's deadline for serving its Preliminary Invalidity Contentions.

15 11. Google will suffer substantial prejudice if its motion is not granted. The Patent
16 Local Rules require that a patent infringement plaintiff disclose its Preliminary Infringement
17 Contentions forty-five days in advance of requiring that the defendant disclose its Preliminary
18 Invalidity Contentions for good reason: Fairness dictates that the party that initiated the court
19 action – the patent infringement plaintiff – describe its affirmative case before the defendant is
20 required to disclose its defenses. Just as a plaintiff must file a complaint that complies with the
21 applicable rules before a defendant can be required to answer, so too should a patent
22 infringement plaintiff be required to serve Preliminary Infringement Contentions that comply
23 with the Local Patent Rules before a defendant is required to serve Preliminary Invalidity
24 Contentions.

25 12. There have been no prior time modifications in this case, whether by stipulation
26 or Court order.

27 13. Because the schedule proposed by the parties in their Joint Case Management
28 Statement included many dates that were based, directly or indirectly, on the date of service of

1 Overture's Preliminary Infringement Contentions, it is possible that further modifications to the
2 schedule for this case could be necessary if Google's motion is granted. If, however, Google's
3 motion is granted and Overture promptly supplements its Preliminary Infringement Contentions,
4 it may be possible for the parties to agree to (and seek Court approval for) appropriately
5 modified dates for the deadlines required by Patent Local Rules 4-1 – 4-5, such that it would not
6 be necessary for the Claim Construction Hearing (currently scheduled for March 25, 2003) to be
7 rescheduled.

8 I declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct. Executed on this 7th day of October 2002 at San Francisco,
10 California.

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13 *s/Michael S. Kwun*
14 MICHAEL S. KWUN
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